SUPREME COURT, U. S.

FEB 27 1969

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1061

WALTER D. TEAGUE III, CHARLOTTE POLIN, UNITED STATES COMMITTEE TO AID THE NATIONAL LIBERATION FRONT OF SOUTH VIETNAM, LIBERATION, FIFTH AVENUE VIETNAM PEACE PARADE COMMITTEE, and FREE SCHOOL OF NEW YORK, INC.,

Petitioners,

—against—

REGIONAL COMMISSIONER OF CUSTOMS, REGION II and SECRETARY OF THE TREASURY OF THE UNITED STATES,

Respondents.

PETITIONERS' SUPPLEMENTAL BRIEF

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PETITIONERS' SUPPLEMENTAL BRIEF

Petitioners, pursuant to Rule 24, submit this supplement to their petition for certiorari to explain to the Court the reason for the late filing of the petition for certiorari, and pray the Court to accept the petition as timely.

The judgments sought to be reviewed were both entered November 14, 1968. The ninety day period for filing the petition therefore expired Wednesday, February 12, 1969. Corrected page proof of the petition was given to the printer on the morning of February 7, 1969 with instructions to print it, serve the Solicitor General, and send forty copies by first class mail to the Clerk for filing. The printer was unable to complete the job until the morning of Mon-

day, February 10, 1969, and about noon of that day a package of forty copies of the petition was deposited in a branch post office for mailing to the Clerk.

On Sunday, February 9, New York City was hit by a severe snow storm, which disrupted many services and facilities. Unknown to counsel, one of the services which suffered was the United States mail. As a result, the petition was not received by the Clerk until Friday, February 14, 1969, two days out of time.

Counsel had no way of knowing that the storm would cause more than a short delay in mail service. Normally first class mail sent from New York to Washington arrives overnight. Even with the storm, it could not be anticipated that mail would take more than the two and one-half days remaining in which to file the petition. But even if this could have been foreseen, there would have been no possibility of petitioning for an extension of time, as the filing of such petition would have incurred the same delay as the petition for certiorari.

Serious questions have been raised as to the unfairness to a litigant of strict enforcement of rules relating to timeliness, where the tardiness is attributable to the negligence of his attorney. See *Morris* v. *Florida*, 393 U. S. 850 (1968) (Mr. Justice Black dissenting) and cases cited therein. Where the delay in filing is the result of *force majeure*, it certainly should be excused. As this Court said in a different context (the dismissal of a complaint under Rule 37), "where failure to comply has been due to inability, and not to wilfullness, bad faith or any fault of petitioner" the

complaint should not have been dismissed. *Societe Internationale* v. *Rogers*, 357 U. S. 197, 212 (1958).

Respectfully submitted,

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